

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.27299 of 2005

Date:02.01.2006

Between:

K.K.Valli Primary Agriculture Cooperative Society

-----PETITIONER

AND

The District Collector and others

-----RESPONDENTS

ORDER:

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The petitioner is a Primary Agriculture Cooperative Society in West Godavari District. The third respondent herein was employed as a Secretary in the Society. Through proceedings, dated 25.07.2002, the petitioner terminated the services of the third respondent. Aggrieved thereby, the third respondent preferred an appeal before the first respondent. The appeal was allowed through order, dated 22.09.2005 by the first respondent and the third respondent was directed to be reinstated without any consequential and incidental benefits. The second respondent, in turn, passed a consequential order, dated 17.10.2005, directing the petitioner to reinstate the third respondent with a semblance of warning. The same is challenged by the petitioner.

Smt.Bobba Vijayalakshmi, the learned counsel for the petitioner submits that the first respondent did not give proper opportunity to the petitioner, before the impugned order was passed. She also contends that the form of the order indicates as though the first respondent exercised the power to issue writs, which is the exclusive prerogative of the High Courts. She contends that the concluding portion of the order is reflective of the ambiguity, in exercise of appellate power. The learned counsel

submits that though the petitioner submitted a detailed written submission on receiving notice, the same was not taken into account when the impugned order was passed.

The learned Government Pleader for Cooperation, on the other hand, submits that the first respondent took into account, the grounds of appeal presented by the third respondent, the counter-affidavit filed by the petitioner as well as the note prepared by the office. He contends that the order was issued in an improper form, by the subordinate staff, without knowledge by the first respondent.

The learned counsel for the third respondent submits that once the principles of natural justice have been complied with, no exception can be taken to the impugned order.

When it was noticed that the impugned order issued as though it is a writ, the first respondent was required to appear and explain the circumstances that lead to the passing of the same. The first respondent placed before this Court, the relevant note file and stated that after going through the entire record, he made an endorsement to the effect that the appeal needs to be allowed. He states that rest of the ministerial work was undertaken by the then District Cooperation Officer, without his knowledge.

A perusal of the impugned order discloses that apart from the objectionable form, in which it is issued, it does not reflect the contention of the third respondent or the reply submitted by the petitioner herein, much less, any discussion was undertaken on them. The first respondent is exercising an appellate power. For all practical purposes, an appellate authority is expected to examine the matter under appeal, as though it is the original authority, by itself. Axiomatically, the appellate authority is under obligation to refer to the facts, the contentions of both the parties and record its own findings, duly furnishing reasons in support thereof. The whole episode discloses that the first respondent was not properly assisted in the matter, either before or after he disposed of the same. While at the predisposal stage, he was not appraised of the relevant provisions of law and the procedure, at the post disposal stage, many things have taken place without his knowledge.

The impugned order directs that the order, dated 25.07.2002, terminating the services of the third respondent is set aside. However, the last sentence reads as though the appeal is admitted. The order is not clear as to whether it is final or preliminary stage of the appeal. The first respondent ought to have acquainted himself with the correct procedure to be followed in such matters. Valuable rights of the individuals and institutions cannot be dealt with in such a casual manner. The impugned order is liable to be set aside on more counts than one. Any expression of the views by this Court on merits, is likely to have its effect on further proceedings.

Therefore, the writ petition is allowed and the impugned order is set aside. The first respondent is directed to hear and dispose of the appeal afresh, duly giving an opportunity to both the parties. It is made clear that he shall by himself supplement the reasons in support of his conclusions and that the same shall form part of the order, that may be passed in the appeal, finally. There shall be no order as to costs.

02.01.2006

Note: LR copy to be marked

(B/o)

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